

Remarks

By the foregoing Amendment, claims 1 and 12 are amended. Entry of the Amendment and favorable consideration thereof is earnestly requested. Applicant respectfully submits that no new matter was added by this amendment and is fully supported by the specification. (p. 3, lines 11-21)

The Examiner has rejected all the claims under 35 U.S.C. §103 as unpatentable over U.S. Patent No. 5,329,940 to Adair ("the '940 patent") in view of U.S. Patent No. 3,996,939 to Sheridan et al. ("the '939 patent"). These rejections are respectfully traversed.

Applicant would like to thank the Examiner for the teleconference interview of March 5, 2004. In accordance with that interview, Application has amended all the claims of the present invention to require, among other elements, an endoscope having a rigid shaft, the shaft having a rigid preformed shape comprising a curved portion extending from a distal end of the shaft and extending along a length of the shaft to a transition point, and a straight portion extending along a length of the shaft from the transition point to a proximal end of the shaft, the shaft having an outer diameter less than 2.5 mm.

The '940 patent teaches that a major challenge in the intubation of patients is that different patients have different anatomy or possibly an injury may alter the anatomy. (col. 1, lines 55-66). In response, the '940 patent teaches that "the assist device is constructed with a malleable insertion section which may be bent to a shape which is most accommodating to a particular patient" and that "[t]he insertion section is formed of a malleable material such as malleable stainless steel or silver tubing and may be bent by an operator to accommodate the shape of the trachea of the patient at hand." (col. 2, lines 12-15 & 51-54; see also col. 3, lines 26-35 "[t]he malleable insertion section may be bent by hand by the physician ... to a shape that is most suited for maneuvering the

insertion section and endotracheal tube through that particular patient's trachea.") This runs directly contrary to claims 1 and 12, which both require a rigid shaft having a rigid preformed shape.

In addition, the '939 patent also teaches that "[t]he rod ... is made of such metal or metal alloy that it is capable of being bent into a desired configuration and will remain in such shape." (col. 1, lines 62-65). The '939 patent further teaches that the "rod 4 is preferably made of aluminum metal or aluminum alloy, particularly a soft variety such as type 1100-0" or "the rod may be made of other metals or alloys ... in a diameter relative to the metal hardness and ductility to approximate the same stiffness and bendability properties as a rod made of said type 1100-0 aluminum." (col. 2, lines 52-59; see also col. 4, lines 18-21). Again, all the claims of the present invention require a rigid shaft having a rigid preformed shape.

The present invention is an intubation device designed for use with babies or premature infants the intubation of which may be particularly problematic due to anatomical considerations and/or disorders requiring intubation. (p. 2, lines 18-24; p. 4, lines 19-21). As such, the present invention is provided with a shaft having rigid preformed shape that due to for instance, anatomical structures of babies and premature infants, is optimal for the intubation of such. (p. 5, lines 1-11). It is undesirable then to change this rigid preformed shape and therefore the shaft is made of a rigid material such that the shape cannot be changed by the physician being characterized as "bend-resistant." (p. 4, lines 23-28).

Applicant therefore submits that because both the '940 patent and the '939 patent fail to teach, disclose or suggest an endoscope having a rigid shaft, the shaft having a rigid preformed shape comprising a curved portion extending from a distal end of the shaft and extending along a length of the shaft to a transition point, and a straight portion extending along a length of the shaft from the transition point to a proximal end of

the shaft, the shaft having an outer diameter less than 2.5 mm, neither reference alone or in any combination can render claims 1 and 12 of the present application obvious.

It is respectfully submitted that claims 1-9 and 11-14, all of the claims remaining in the application, are in order for allowance, and early notice to that effect is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Todd M. Oberdick", is written over a horizontal line.

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